provisions of Limitation Enactment (Cap. 18), section 19 (ii), and pleaded by the plaintiff.

2. Does the fact of the defendant being in possession of the charged land save the running of the time under section 19 (ii) of (Cap. 18).

3. Is the power of attorney dated the 10th day of June, 1918, null and void **ab initio** or not.

4. If not bad **ab initio** did it cease to be of force at any time if at all and if so when.

5. Is the possession of the charged land by the defendant legal.

Dealing firstly with issue No. 3, having regard to the decision of the Court of Appeal in *Idris v. Ng Ah Siew*[1], I hold that the power of attorney purported to give to the chargee a right or interest in the land of the Malay chargor, and as such was contrary to the provisions of section 8 (i) of the Malay Reservations Enactment, 1913 (Enactment 15 of 1913) which was in force at the date of the power of attorney (10th June, 1918), and consequently under section 13 of the same Enactment the dealing or attempt to deal in the land was null and void.

Issue No. 4.—Even if the power of attorney were not null and void *ab initio,* it ceased to be operative on the date of the death of the chargor, viz., on the 12th July, 1921. This, *Mr. Chin Swee Onn,* advocate for the chargee, admits.

Issue No. 2.—It is admitted that the defendant was and still is in possession of the land, but this, and the receipt of the produce of such land does not of itself save the running of the period of limitation under section 19 (ii) of the Limitation Enactment (Cap. 18). In the present case, since I hold that the power of attorney under which the chargee entered into possession was void, the chargee was, from the beginning, a trespasser. Moreover, the power of attorney did not expressly empower the chargee to enter into possession of the charged land. All it did was to appoint the chargee to "look after the coconut estates; to engage and discharge coolies as he thought fit; to sell coconuts when the trees are bearing."

Section 137 of the Land Code which allows a chargee to enter into possession, only applies to land held under grant, lease or certificate of title, and there was a similar provision under the Registration of Titles Enactment, 1911, which was in force at the date of the power of attorney (1918). But there was no provision under the Land Enactment, 1911, for a chargee to enter land held under the mukim register. Consequently, section 19 (ii) of the Limitation Enactment can have no application in the present case; and, clearly, that sub-section contemplated a lawful possession.

Issue No. 1.—I hold that the defendant is barred from claiming relief. The charge was repayable on the 8th June, 1920, and consequently under Article 101 of the second schedule to the Limitation Enactment, the defendant must claim within 12 years of the time when the money sued for became due.

Mr. Chin Swee Onn contended that under the Limitation Enactment, 1896, which was in force at the date of the charge, under Article 114 of the second schedule thereto, a mortgagee was allowed 60 years in which to claim for foreclosure and sale, from the time "when the money secured by the mortgage became due".

As was pointed out by Thomas, C.J., in *Gan Khor v. Soan*[2] "There is no such thing as a mortgage of land known to the law of the Federated Malay States. Charges alone are recognised. The rights arising from a charge are contained in the Land Code."

The above Article 114 has been deleted from the second schedule to the present Enactment.

I hold that the period of limitation for a chargee to recover his debt is 12 years, and the present defendant's claim is statute barred.

I, accordingly, make the order applied for, in the terms of the summons, and order the defendant to pay the costs.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

July 4, 1940.

CHUAN HOO vs. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 24 of 1940]

Evidence recorded in another case—Arguments founded thereon—Validity of conviction.

A number of persons were charged with a similar offence and one of the cases was to be taken as a test case. Evidence was taken and the accused was convicted. He refused, however, to appeal. It was intended that the present case should now be the test case.

Instead of calling evidence, arguments were heard based upon the facts given in evidence in the previous case and the accused was convicted.

Held, that the conviction could not stand. A question of fact cannot be decided upon evidence recorded in an entirely separate case.

M. Edgar for appellant.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for respondent.

Cussen, J.—This appellant was convicted on the 18th March, 1940, by the Magistrate, Kuala Lumpur, on a charge of an offence under sections 6 and 9 of Chapter 86, i.e., dealing in second-hand goods without a licence. He was fined $15.

This was one of fifteen summons cases brought by the police against fifteen persons who carried on in shops in Kuala Lumpur the business of cycle dealers or repairers. The first of these cases No. 3196/39 was tried before the Magistrate on the 31st January, 1940. *Mr. Edgar* appeared as counsel for the defendant and the defendant was one Tan Ki Lim. He claimed trial.

The Magistrate heard the evidence and convicted the defendant and fined him $15.

This case was taken as a test case and the remaining summons cases were postponed pending the result of a proposed appeal against this conviction. However, in the event Tan Ki Lim refused to appeal. The result was that the case against the present appellant was brought on for hearing on the 18th March, 1940. It was intended that this case should now be the test case. The defendant claimed trial. No evidence was recorded; the record reads as follows:

> "Case 3197 disposed of to-day. **Edgar** for defence. Defence counsel addresses Court. Says defendant in last case 3196 refused to appeal. Court suggests dealing with such cases after submission made because facts, same as in last case, are not disputed."

The Court, therefore, heard no evidence, but after arguments based upon the facts given in evidence in the previous case convicted the present appellant and fined him $15.

It is evident that this conviction cannot stand, because no evidence has been recorded in this case and it is not permissible to decide what is largely a question of fact upon evidence of fact recorded in an entirely separate case. The evidence of the prosecution should have been given in this particular case.

The conviction and sentence are therefore set aside and a re-trial is ordered.

Appeal allowed. Re-trial ordered.